

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

## **MEMORANDUM AND ORDER**

Plaintiff seeks leave to proceed in forma pauperis in this civil action under the Federal Torts Claim Act. The motion is granted. Additionally, the Court will order plaintiff to show cause why this action should not be dismissed for lack of jurisdiction.

## The Complaint

Plaintiff alleges that he was injured in an altercation with correctional officers while he was detained at the St. Louis County Justice Center. He says that FBI Agent Carne Cerone investigated the incident. He argues that Agent Cerone was negligent and deceitful in conducting the investigation because he reported that plaintiff did not have any injuries in his medical records.

Plaintiff filed a copy of his medical records, and they show that he had headaches and mild dizziness. The doctor did not make a specific diagnosis. The doctor reported that the headaches could have either resulted from the altercation or from plaintiff's high blood pressure. Specifically the report states: "Headache . . . **Impression:** Secondary to the altercation with justice services vs from hypertension (blood pressure elevated)." Pl.'s Ex. at 11.

## Discussion

Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, the Court is required to dismiss a complaint at any time if subject matter jurisdiction does not exist.

To bring an action under the Federal Torts Claims Act, 28 U.S.C. § 1346, a plaintiff must first present his or her claim to the appropriate federal agency pursuant to 28 U.S.C. § 2675(a). Non-compliance with § 2675(a) operates as a jurisdictional bar to proceeding in federal court. McCoy v. United States, 264 F.3d 792, 795 (8th Cir. 2001) (“A litigant may not base any part of his tort action against the United States on claims that were not first presented to the proper administrative agency.”).

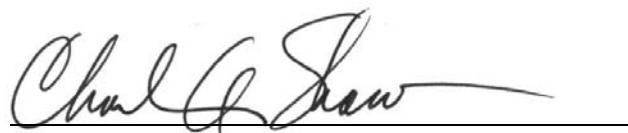
It does not appear that plaintiff presented his claim to the FBI. Therefore, plaintiff is directed to show cause why this action should not be summarily dismissed for failure to comply with § 2675(a).

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis is **GRANTED**. [Doc. 3]

**IT IS FURTHER ORDERED** that plaintiff must show cause, no later than twenty-eight (28) days from the date of this Memorandum and Order, why this action should not be dismissed.

**IT IS FURTHER ORDERED** that if plaintiff fails to respond to this Memorandum and Order, the Court will dismiss this action without further notice.



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CHARLES A. SHAW  
UNITED STATES DISTRICT JUDGE

Dated this 30th day of November, 2015.